

**NONRESIDENT INCOME AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill modifies income tax provisions related to income received for personal services rendered.

**Highlighted Provisions:**

This bill:

- ▶ provides that a salary, a wage, a commission, or compensation received for personal services rendered within the state is derived from Utah sources;
- ▶ excludes a salary, a wage, a commission, or compensation received for personal services rendered from business income; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides retrospective operation.

**Utah Code Sections Affected:**

AMENDS:

**59-10-117**, as last amended by Laws of Utah 2017, Chapter 318

**59-10-118**, as last amended by Laws of Utah 2008, Chapters 105 and 389

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **59-10-117** is amended to read:

**59-10-117. State taxable income derived from Utah sources.**

(1) For purposes of Section 59-10-116, state taxable income derived from Utah sources includes state taxable income attributable to or resulting from:

- (a) the ownership in this state of any interest in real or tangible personal property, including real property or property rights from which gross income from mining as described by Section 613(c), Internal Revenue Code, is derived;

(b) the carrying on of a business, trade, profession, or occupation in this state;

(c) an addition to adjusted gross income required by Subsection 59-10-114(1)(c), (d), or (h) to the extent that the addition was previously subtracted from state taxable income;

(d) a subtraction from adjusted gross income required by Subsection 59-10-114(2)(c) for a refund described in Subsection 59-10-114(2)(c) to the extent that the refund subtracted is related to a tax imposed by this state; or

(e) an adjustment to adjusted gross income required by Section 59-10-115 to the extent the adjustment is related to an item described in Subsections (1)(a) through (d).

(2) For purposes of Subsection (1):

(a) income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from Utah sources only to the extent that the income is from property employed in a trade, business, profession, or occupation carried on in this state;

(b) a deduction with respect to a capital loss, net long-term capital gain, or net operating loss shall be:

(i) based solely on income, gain, loss, and deduction connected with Utah sources, under rules prescribed by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) otherwise determined in the same manner as the corresponding federal deductions;

(c) a salary, wage, commission, or compensation for personal services rendered;

(i) inside this state is considered to be income derived from Utah sources; and

(ii) outside this state may not be considered to be income derived from Utah sources;

(d) a share of income, gain, loss, deduction, or credit of a nonresident pass-through entity taxpayer, as defined in Section 59-10-1402, derived from or connected with Utah sources shall be determined in accordance with Section 59-10-118;

(e) a nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of the dealer's trade or business, may not be considered to carry on a trade, business, profession, or occupation in this state solely by reason of the purchase or sale of property for the nonresident's own account;

(f) if a trade, business, profession, or occupation is carried on partly within and partly without this state[;];

(i) an item of income, gain, loss, or a deduction derived from or connected with Utah sources shall be determined in accordance with Section 59-10-118; and

(ii) a salary, a wage, a commission, or compensation for personal services rendered is not considered to be an item of income from a trade, business, profession, or occupation;

(g) the share of a nonresident estate or trust or a nonresident beneficiary of any estate or trust in income, gain, loss, or deduction derived from or connected with Utah sources shall be determined under Section 59-10-207; and

(h) any dividend, interest, or distributive share of income, gain, or loss from a real estate investment trust, as defined in Section 59-7-101, distributed or allocated to a nonresident investor in the trust, including any shareholder, beneficiary, or owner of a beneficial interest in the trust, shall:

(i) be income from intangible personal property under Subsection (2)(a); and

(ii) constitute income derived from Utah sources only to the extent the nonresident investor is employing its beneficial interest in the trust in a trade, business, profession, or occupation carried on by the investor in this state.

Section 2. Section **59-10-118** is amended to read:

**59-10-118. Division of income for tax purposes.**

(1) As used in this section:

(a) [~~"Business~~] (i) Except as provided in Subsection (1)(a)(ii), "business income" means income arising from transactions and activity in the regular course of a taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

(ii) "Business income" does not include a salary, a wage, a commission, or compensation for personal services rendered.

(b) "Commercial domicile" means the principal place from which the trade or business of a taxpayer is directed or managed.

(c) "Nonbusiness income" means all income other than business income.

(d) "Sales" means all gross receipts of a taxpayer not allocated under Subsections (3) through (7).

(e) "State" means any state of the United States, the District of Columbia, the

commonwealth of Puerto Rico, or any possession of the United States.

(2) A taxpayer having business income that is taxable both within and without this state[?] shall allocate and apportion the taxpayer's net income as provided in this section.

(3) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that ~~[they]~~ rents and royalties constitute nonbusiness income, shall be allocated as provided in Subsections (4) through (7).

(4) (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(i) if and to the extent that the property is utilized in this state; or

(ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) (i) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year.

(ii) If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(5) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) the property has a situs in this state at the time of the sale; or

(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(6) Interest and dividends are allocable to this state if the taxpayer's commercial

126 domicile is in this state.

127 (7) (a) Patent and copyright royalties are allocable to this state:

128 (i) if and to the extent that the patent or copyright is utilized by the payer in this state;

129 or

130 (ii) if and to the extent that the patent or copyright is utilized by the payer in a state in

131 which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

132 (b) (i) A patent is utilized in a state to the extent that ~~[it]~~ the patent is employed in

133 production, fabrication, manufacturing, or other processing in the state or to the extent that a

134 patented product is produced in the state.

135 (ii) If the basis of receipts from patent royalties does not permit allocation to states or if

136 the accounting procedures do not reflect states of utilization, the patent is utilized in the state in

137 which the taxpayer's commercial domicile is located.

138 (8) All business income shall be apportioned to this state using the same methods,

139 procedures, and requirements of Sections 59-7-311 through 59-7-320.

140 Section 3. **Retrospective operation.**

141 This bill has retrospective operation for a taxable year beginning on or after January 1,

142 2020.